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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,781	03/31/2004	James Lee Gardiner	CC-3643	5225

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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/813,781

Applicant(s)

GARDINER, JAMES LEE

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

1. Claims 23 and 28 are objected to because of the following informalities: Claim 23 ends with two periods; claim 28 does not have a period at the end of the sentence. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 6-9, 17-22 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuo US 5,131,554.

Kuo '554 teaches a plastic dust cover for sealing a beverage can countersink comprising a ring-shaped filler (unlabeled; read to comprise the annular peripheral portion which depends into the container countersink). Central portion (4) is read to be the substantially flat or continuous surface extending radially inwardly from the countersink.

Regarding claims 22-23, Examiner notes plastic is a synthetic arrangement of naturally formed polymers, therefore it is read to be both synthetic and natural.

4. Claims 1-4, 6-12, 17-25 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Nieuwoudt US 5,996,832.

Nieuwoudt '832, in the embodiment of figure 17, teaches a plastic cover (68.2) for sealing a beverage can top, including countersink filler material (82), and where the can top has a raised central portion (64). Central portion (78) is read to be the substantially flat or continuous surface extending

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radially inwardly from the countersink. The reference discloses in column 2, lines 9-11 that mechanical deformation or gluing (read to comprise an adhesive) are suitable means for securing the cover to the end of a beverage can.

Regarding claims 22-23, Examiner notes plastic is a synthetic arrangement of naturally formed polymers, therefore it is read to be both synthetic and natural.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuo US 5,131,554 in view of Tominaga et al. US 5,653,355.

Kuo '554 fails to teach reinforcing ribs on the cap outer surface.

Tominaga '355 teaches a reinforcing rib (14) adjacent the drink opening on the can end panel for providing rigidity to the can end.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the can end of Kuo '554, providing the reinforcing rib (14) taught by Tominaga '355, motivated by the benefit of strengthening the can end against deformation from internal pressure.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nieuwoudt US 5,996,832 in view of Tominaga et al. US 5,653,355.

Nieuwoudt '832 fails to teach reinforcing ribs on the cap outer surface.

Tominaga '355 teaches a reinforcing rib (14) adjacent the drink opening on the can end panel for providing rigidity to the can end.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the can end of Nieuwoudt '832, providing the reinforcing rib (14) taught by Tominaga '355, motivated by the benefit of strengthening the can end against deformation from internal pressure.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-32 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No. 6,425,493. Although the conflicting claims are not

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identical, they are not patentably distinct from each other because the claims are drawn to the same invention.

10. Claims 1-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,729,495. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are drawn to the same invention.

Response to Arguments

11. Applicant's arguments filed 03 January 2007 have been fully considered but they are not persuasive.

a) Applicant argues Kuo does not teach "filler material," that is "covering the groove," that is "smoothly merging with the upper surface of the center panel," and which extends to about the same level as the center panel."

Examiner notes in Kuo '554, figure 2, that the cover can be reasonably interpreted to comprise "filler material" because it fills the opening. It covers the groove because it is disposed on top of the groove, thus covering it from the ambient conditions. It smoothly merges with the container top in that it is full contact with the top surface of the can, and thus merges smoothly with the upper surface. Lastly, it is at "about" the same level as the center panel as it is disposed just above the can top surface.

b) Applicant argues Nieuwoudt '832 does not teach "filler material," that is "covering the groove," that is "smoothly merging with the upper surface of the center panel," and which extends to about the same level as the center panel."

Examiner notes in Nieuwoudt '832, figures 17, 18 and/or 22, that the cover can be reasonably interpreted to comprise "filler material" because it fills the opening. It covers the groove because it is disposed on top of the groove, thus covering it from the ambient conditions. It smoothly merges with the container top in that it is full contact with the top surface of the can, and thus merges smoothly with the

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upper surface. Lastly, it is at "about" the same level as the center panel as it is disposed just above the can top surface.

Allowable Subject Matter

12. Claims 13-16 and 27-31 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and with the filing of a Terminal Disclaimer in order to overcome the outstanding Double Patenting rejections.

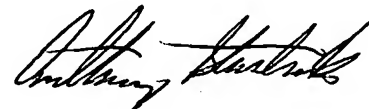
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns



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